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Summary record of the first part (public)* of the 2623rd meeting
Held at Headquarters, New York, on Wednesday, 1 April 2009, at 3 p.m.

Chairperson: Mr. Iwasawa

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.2623/Add.1.

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The meeting was called to order at 3.20 p.m.

Organizational and other matters (*continued*)

Working methods (*continued*) (CCPR/C/95/R.5; CCPR/C/95/5)

1. **The Chairperson** said that the Committee first needed to decide whether it needed to have some form of guidance on how to deal with undue delays in submitting communications. If the Committee decided it did, it would then have to decide whether a subparagraph should be added to rule 96 of its rules of procedure or if instead a footnote should be added to paragraph 96 (c), and indeed to establish whether it was legally entitled to add a subparagraph to the rules.

2. **Mr. Thelin** said that in his view neither the Covenant nor the Optional Protocol prevented the Committee from adopting a new rule; its power to do so was inherent in its capacity to adopt working methods. His preference would be to add a subparagraph to rule 96.

3. **Ms. Wedgwood** said that whether a footnote or a separate rule was added would make no difference to those who followed the work of the Committee. She agreed that the Committee had the inherent power to amend the rules of procedure, but the decision was purely a housekeeping matter, and time should not be wasted debating it. She could accept a footnote, and if the Committee decided to go ahead with Sir Nigel Rodley's proposed text, the language was sufficiently loose and did not suggest that factors (a) to (e) were the only factors considered when deciding whether there had been an abuse of the right of submission.

4. **Mr. Rivas Posada** said that the Committee should endeavour to impose a time limit for the submission of communications. The practice thus far had not been consistent and lacked clarity, which was not helpful for either the Committee, the authors of communications, or States parties. It would therefore be useful if, before any decision was made on time limit, the Committee could indicate clearly how an undue delay in submitting communications constituted an abuse of the right of submission. He wondered, incidentally, whether any Committee member was in favour of including a *ratione temporis* provision not related to the abuse of that right.

5. **Mr. O'Flaherty** said that there was no provision in the Covenant or the Optional Protocol for a time limit for submitting communications. The drafters of those instruments had been aware that time limits existed in, for example, the European Convention on Human Rights, but had declined to include one in the Optional Protocol. He had no strong opinion as to whether or not the Committee had the power to add such a rule, but simply believed it would be imprudent. The Covenant and the Optional Protocol were not widely known around the world, even among lawyers, and people could not be expected to be aware of procedures that could be taken for granted in places such as Europe, where setting a time limit was more reasonable. However, he agreed that there was a need for some form of guidance on when delays could constitute an abuse of the right of submission. He therefore reiterated his support for Sir Nigel Rodley's proposal to add a footnote that would assist the Committee in determining whether there had been such an abuse.

6. **Mr. Fathalla** said that time limits and other criteria should be included in the rules of procedure. He wondered whether, from a legal standpoint, there was any difference between a new rule and a footnote to an existing rule. In his view, they amounted to the same thing because both would amend the rules of procedure. The Committee had adopted the rules of procedure, and consequently it also had the power to amend them. He asked the secretariat for further clarification.

7. **The Chairperson** said that article 3 of the Optional Protocol specified three grounds for the Committee to consider a communication inadmissible: anonymous submission, an abuse of the right to submission, or incompatibility with the provisions of the Covenant. Article 5 went on to give one more reason: non-exhaustion of domestic remedies. There was however no specific provision relating to a time limit.

8. **Mr. Fathalla** asked for clarification of whether adding a new footnote addressing time limits to the rules of procedure would constitute an amendment.

9. **The Chairperson** said that he believed it would.

10. **Mr. Amor** said that the Committee might consider drafting a General Comment to address the provisions in the Optional Protocol on abuse of the right of submission. It needed to decide whether it wanted to set a limit beyond which, except in exceptional cases, communications could not be

submitted. If it so decided, there were other questions to consider, including whether to include a provision to that effect in rule 96, what the time limits would be and what exceptional circumstances would be considered. The Committee should also consider why the Optional Protocol did not set a time limit, and in that connection should examine the *travaux préparatoires*.

11. **Sir Nigel Rodley** said that, in principle, he had no objection to including a new rule on the basis of the Committee's implied powers, taking account of what the *travaux préparatoires* might reveal on the matter. However, the fact that the Covenant specified in rule 96 the grounds for inadmissibility, and did not address the issue of a time limit, should make the Committee think twice before adding such a provision. On the only occasions on which the Committee had refused communications for reasons of their delay, it had been seen as an abuse of the right of submission. That might indicate that in the past, the Committee had not been ready to add a new, separate *ratione temporis* rule. The Committee should take care not to send the message that a decision to impose time limits was in any way arbitrary.

12. There was also a stylistic question to consider. All the rules of procedure were very clear and left no room for discretion. The current text of the rules contained only one footnote, permitting the Committee to exercise its discretion with regard to the principle of operating by consensus, which, while fundamental to the work of the Committee, did not lend itself to a clear rule. Referring to Mr. Fathalla's request for clarification on the legal significance of choosing to add either a new rule or a footnote, he suggested that the former would need to be a clear rule, whereas the latter would simply provide guidelines for the Committee to exercise its judgement, as would be the case if the Committee agreed to the proposal contained in document CCPR/C/95/R.5. If that were the outcome, language stating clearly that delay was not the only basis for an abuse of the right of submission would need to be incorporated in the text as it stood at present.

13. It would be desirable to reach agreement that some form of guidance was needed, rather than having to discuss the issue every time it arose, but the decision should not be rushed. After 30 years, the Committee should not suddenly decide to apply its interpretation of the Optional Protocol without fully exploring the background to its drafting.

14. **Ms. Wedgwood** agreed that the Committee should examine the *travaux préparatoires*, to see if they gave any indication of an opinion on the issue of time limits. If so, account must be taken of that opinion.

15. **Mr. Thelin** said that the issue was whether the Committee had the power to change its own rules, or whether article 3 of the Optional Protocol effectively prevented it from adding anything to rule 96 of the rules of procedure.

16. He was still in favour of Mr. Shearer's proposal to add to rule 96. If that proposal was not agreeable, perhaps the Committee could follow Mr. Amor's suggestion to draft a General Comment, rather than adding a footnote to the rules.

17. **Mr. Amor** said that the issue of whether to establish some kind of rule on time limits and the question of whether to draft a General Comment on abuses of the right of submission were not mutually exclusive.

18. **Mr. O'Flaherty** said that he was not primarily concerned with the technical matter of whether the rules could or should be changed or whether the Committee should draft a General Comment. The important issue was whether the Committee was going to impose a time limit on the submission of communications under the Optional Protocol. He agreed with Sir Nigel Rodley that it would be useful to delay such a decision, or only to take a provisional decision, since, as Ms. Wedgwood had also noted, the *travaux préparatoires* needed to be taken into account. It might even be useful to have the views of States parties on the matter. No decision on time limits should be made at the present meeting.

19. **The Chairperson** said that it was not his intention for a decision to be made at the present meeting. Rather, the Committee should continue its discussion of the matter. The question then became how it should be expressed. Members appeared to agree that some form of guidance was needed in a General Comment or an amendment to the rules of procedure — whether through Mr. Shearer's proposal to add to rule 96 or through a footnote. The Bureau needed to discuss how to proceed.

20. **Mr. Amor** said that there was no need to involve the Bureau, whose primary role was to support the

Chairperson, since the Committee was already discussing the issue.

21. **Mr. O'Flaherty** proposed that since Sir Nigel Rodley had already been working on the matter the Committee could request him, if he was willing to do so, to review all the options, taking account of the discussions and of any direction provided by research into the *travaux préparatoires*, and submit his conclusions to the Committee at its next session. He could either present a series of options or formulate one clear proposal.

22. **Mr. Thelin** said that he fully supported Mr. O'Flaherty's proposal.

23. **Mr. Amor** said that any practical solution was welcome. However, the Committee already had Mr. Shearer's text and a proposal from a member of the Committee. There had been much discussion, and he would prefer the Committee to continue working on the matter. If the Committee wanted other proposals, he would be willing to make one.

24. **Sir Nigel Rodley** said that he was not willing to express a view on the matter: it was entirely for the Committee to decide. However, he wanted to make it clear that the proposal he had presented to the Committee at the 2621st meeting, contained in document CCPR/C/95/R.5, was not solely the proposal of one Committee member, but one that he had prepared at the request of the Bureau.

25. **Mr. Fathalla** said that no member was precluded from submitting proposals on any issue. The various proposals on the matter under discussion could be discussed in parallel at the Committee's next session.

26. **Mr. O'Flaherty** said that unless the Committee made a formal decision to the contrary, Mr. Shearer's proposal should no longer be on the table. In his recollection, even Mr. Shearer himself had acknowledged that his proposal did not have sufficient support in the Committee. Having multiple proposals would just complicate matters and perpetuate the debate.

27. **Mr. Thelin** said that he could not see how the records of previous discussions of the issue demonstrated that Mr. Shearer's proposal should no longer be considered.

28. **Mr. Rivas Posada** said that Mr. Shearer had not withdrawn his proposal, but had simply noted the lack of a consensus and proposed that discussion continue. He himself, as Chairman at the meeting when the discussion in question had taken place, had said that further discussion was not possible at that time owing to the late hour, and had suggested postponing it until the next meeting.

29. **The Chairperson** said that it had been his understanding as well that there had been some support for Mr. Shearer's proposal. Proposals by other members were welcomed.

30. **Mr. O'Flaherty** said that, having just read the summary record of the meeting in question, he wished to correct what he had said earlier. Discussion of Mr. Shearer's proposal had not been formally closed.

31. **Sir Nigel Rodley**, introducing his paper as Rapporteur for Follow-up on Concluding Observations entitled "Suggestions for strengthening the follow-up procedure" (CCPR/C/95/5), said he regretted that it existed in English only.

32. The first 23 paragraphs provided background on what other committees and the Human Rights Committee were doing in regard to assessing replies. From paragraph 24 onward, there were suggestions for consideration by the Committee. The first suggestion, that the follow-up procedure should apply to all recommendations in the concluding observations, was not recommended for adoption, as it would be too much for any Special Rapporteur to handle. None of the other committees applied the follow-up procedures to all concluding observations, and with the resources available it would be very difficult for any one person to review responses on follow-up to all concluding observations. Accordingly, practice followed by the other committees should be adhered to, and only the two, three or four paragraphs which had been singled out for response should be dealt with. It should be kept in mind that one factor in the choice of paragraphs was the importance of the issue or issues in question.

33. Suggestion 2 in paragraph 25 was for the Committee to be more systematic in its decisions to seek consultations with a State party. One approach might be to seek consultations if there was no response within two sessions of a due date. Prior to that, reminders could be sent out.

34 Paragraph 26 discussed possible ways to assess State party responses, beyond the use of the descriptive terms "complete", "incomplete" or "partially complete"

currently in use. The categories proposed were very close to those used by the Special Rapporteur on extrajudicial, arbitrary or summary executions. "Recommendation not implemented" could be further broken down into "with reasons given" and "with no reasons given". The categories were proposals that were open for discussion.

35. Paragraph 27 had to do with whether the letters of the Special Rapporteur to States parties would be in the public domain, on the Internet, as were the replies of States parties, the information from non-governmental organizations and the follow-up reports. Those letters were now the only documents not on the Internet, and as they gave considerable guidance regarding information the Committee thought the States parties might appropriately provide, perhaps they too should be made available in that way.

36. Paragraph 28 raised the possibility of visits to States parties to discuss issues arising out of the relevant follow-up recommendations. Such visits would of course require invitations and allocation of resources from the Office of the High Commissioner for Human Rights.

37. **Ms. Wedgwood** said, referring to paragraph 24, that follow-up was requested on matters which were urgent and on tasks which the State party could accomplish within a year. However, there might be very serious issues, requiring institutional reform that could not be accomplished in a year, that were highly pressing from a moral standpoint or important for good performance under the Covenant. Such issues might be raised in meetings with national representatives. Sir Nigel's opinion in that regard would be helpful.

38. **Mr. Rivas Posada** underscored the importance of making progress on redefining follow-up to concluding observations. The language proposed for evaluation of the information from States parties was acceptable, although future experience might show that further changes were required.

39. Requests for States parties to provide information regarding the concluding observations, might run counter to focus on priority aspects. Although there might be exceptional cases where the Committee should not limit itself to the usual three or four questions, making too many requests could work against the trend of seeking more specific, more relevant information from States parties.

40. **Mr. O'Flaherty** recalled that at the previous session there had been general agreement that a new approach to ranking concluding observations was necessary.

41. With reference to paragraph 26 of the paper presented by Sir Nigel, he wondered to what extent a qualitative element or measurement could be introduced into the assessment, and whether Sir Nigel had thought about the extent to which, while making allowance for available capacities and resources, diverse sources, such as materials from non-governmental organizations (NGOs) and national institutions, could be used.

42. Perhaps the materials referred to in paragraph 27 should be included in the Committee's annual report to the General Assembly, where they could be most effective as tools to embarrass States.

43. The practice of other committees with regard to follow-up visits was patchy and ad hoc, and was dependent on factors such as resources and the availability of members. The Human Rights Committee would probably not be able to do any better. It would be useful to know if Sir Nigel had considered about how the Committee might work with the field offices of the Office of the High Commissioner for Human Rights (OCHCR) to address the follow-up issue. Each new list of issues should have an explicit link with and take account of previous concluding observations. Lastly, if Sir Nigel had any suggestions as to how to link follow-up and the Universal Periodic Review, his comments on that matter would be welcome. Concluding observations were frequently cited in the Universal Periodic Reviews. Perhaps the Committee could have a more considered policy in that regard that could be used by the Special Rapporteur for follow-up to concluding observations. Special rapporteurs for follow-up of all the treaty bodies could meet with the Bureau of the Human Rights Council on a regular basis to ensure that treaty body findings were being appropriately and consistently taken up by the Council.

44. **Sir Nigel Rodley** said that the recommendation to limit required follow-up information on the selected paragraphs did not necessarily mean that there was not an element of priority as well. Frequently, prosecution of those responsible for torture was mentioned in a follow-up paragraph, even though it was clear that that would not happen within a year; what was sought was steps towards some activity in that area.

45. The criteria for selecting the issues could be changed, as Mr. O'Flaherty had pointed out, and that would have a consequential impact. Moreover, States sometimes responded on issues other than those selected, which then became suitable for follow-up by the Special Rapporteur. If a well-resourced Special Rapporteur engaged in more insistent contacts with authorities, the process of dialogue might go beyond the recommendations. But the follow-up process should remain, at least in formal terms, focused on the selected paragraphs.

46. The qualitative element was meant to be implicit in criteria (a) and (b) of paragraph 26. The only way to determine that a particular response was satisfactory would be on the basis of all the information available at the time, which would include information on the relevant issue from NGOs. Substantive evaluation was indeed quite important, and the language was intended to reflect the qualitative element.

47. Including the letters in the annual report was desirable in principle, although it might create problems for the balance and length of the reports. Involving the field offices of OCHCR was a good idea and could be mentioned in a recommendation on visits, if such a recommendation was adopted.

48. As the first step in creating a link with the Universal Periodic Review, the secretariat must convey the necessary information to the relevant actors. Human Rights Council resolution 5 (1) referred to a 10-page compilation of information from treaty body reports and special procedures. Perhaps the secretariat could provide clarification as to whether follow-up information could be included in it.

49. The Committee should be careful about seeking to provide input in a political context, which was not necessarily its role, although it was desirable for the Committee's work to be as accessible as possible to all who were interested. The secretariat would play the key role in making the Committee's country work available to the various phases of the Universal Periodic Review process.

50. **Ms. Prouvez** (Secretary of the Committee) said that the compilation Sir Nigel had referred to included a reference to follow-up. The difference between the various treaty bodies was whether or not the letters sent to the States parties were made public. When they were, background material drawn on for the compilation was more complete. Regarding cooperation with OCHCR field offices, the secretariat could contact the relevant units within OCHCR and report back to the Committee at its next session.

51. **Mr. Fathalla** asked if the five categories for evaluating information provided by States parties referred to in paragraph 26 were applicable only to follow-up information provided within one year or if they might also apply to information provided in the subsequent report.

52. **The Chairperson** said that the proposal was to apply the criteria to the follow-up paragraphs only.

53. **Mr. Fathalla** said that the rules of procedure made no distinction between follow-up within a year or in the subsequent report. Both were considered follow-up, although the follow-up information provided within a year had higher priority than that which was included in the subsequent report. It appeared from Rule 71 that the criteria in paragraph 26 could apply to both.

54. **Ms. Prouvez** (Secretary of the Committee) said that the criteria proposed in paragraph 26 were intended to enhance the qualitative aspect of the assessment made by the Special Rapporteur when the follow-up report was received. The assessment of a State party's initial or periodic report was the subject matter of the set of concluding observations as a whole. The concluding observations always included an introduction with comments on whether the information provided by the State party in the report itself, in the written replies to the list of issues and in the information provided orally during the dialogue was or was not satisfactory.

55. **Mr. Fathalla** wondered whether, if part of a periodic report contained follow-up information, the Committee would apply the criteria of paragraph 26 to that part.

56. **Sir Nigel Rodley** said that once a State had submitted a new periodic report, the Committee's response, including its response to any follow-up information provided, would be provided in its new concluding observations on that report. The Special Rapporteur would then follow up on the new concluding observations, until the subsequent periodic report was due. That was why he had proposed a rule whereby the Committee would remind States parties once their reports were overdue, as the Special Rapporteur then no longer had a role.

57. **Ms. Wedgwood** said that any progress made by a State in relation to the previous concluding observations should certainly be recognized in the positive comments in the new concluding observations. Such recognition could also act as an incentive for a State to make such progress.

58. Greater attention should be given to States whose periodic reports were long overdue or which had never reported, preferably by including one or two of those States in the work programme for each session. If an initial report was very late, it seemed unlikely that the second report would be timely. Yet follow-up on high-priority issues would in any case cease once the Committee had sent a letter to say that the next report was due. There might be another long delay prior to submission of the following report and meanwhile no further information would be provided on the urgent issues referred to in the first concluding observations. It seemed inappropriate that the mere passing of the second reporting deadline would free a State from further follow-up until the second report had been filed.

59. **Sir Nigel Rodley** said that he accepted the points made by Ms. Wedgwood. Although it was not a function of the follow-up process to determine the content of the Committee's concluding observations on the subsequent report, it was important to have a mechanism whereby the Committee would consider a State party's cooperation with the follow-up procedure to see whether recognition of that cooperation was merited.

60. It did seem inappropriate for the Committee to undermine a State party's obligation to report by encouraging it to concentrate on a small range of issues from the previous concluding observations. However, he would not wish to drop that requirement altogether.

61. **Mr. O'Flaherty** said that when papers were discussed in the Committee, they were not always updated to reflect the discussion. Suggestions had been made on the paper currently under discussion, and those that Sir Nigel Rodley had agreed to should be incorporated into the final document so that it provided a mandate for his successor to work with.

62. **The Chairperson** took it that the Committee agreed to that proposal.

63. *It was so agreed.*

64. **The Chairperson** asked whether the document should be made publicly available or remain in its current restricted form.

65. **Sir Nigel Rodley** said that any text that was the subject of public discussion should be in the public domain, if only for the sake of clarity.

66. **Mr. O'Flaherty** said that States parties needed to be informed of any changes to follow-up procedures, and some version of the document should therefore be publicly available. Perhaps it could be included in the annual report, in the chapter on methods of work.

67. **The Chairperson** asked whether the entire document or just the final section of the document containing suggestions would be made public.

68. **Mr. O'Flaherty** suggested that the proposals at the end of the paper be included in the chapter on methods of work of the annual report.

69. **Ms. Wedgwood** said that the whole paper could be published, as it would be useful to provide context in future discussions with other committees and with NGOs.

70. **Sir Nigel Rodley** said he agreed that the entire paper should be in the public domain as it would help to create understanding of the work of the treaty bodies as a whole. The annual report, should include the amended version of the suggestions that emerged from the current debate.

71. **Mr. Pérez Sánchez-Cerro** suggested that a State party's permanent representative in New York or Geneva should be requested to meet with the Special Rapporteur, one year after the submission of a report, to speak about the three or four basic points of the recommendations made in the concluding observations. Such a procedure would be much more effective than a formal letter in ensuring a timely response for the Committee.

72. **Ms. Wedgwood** said she assumed that the Special Rapporteur could include Mr. Pérez Sánchez-Cerro's recommendation in his amendments. It might be useful for the Committee to express the hope that permanent representatives would take time to meet with the Committee's Special Rapporteur to discuss the most urgent issues.

73. **Sir Nigel Rodley** said that the consultations referred to in paragraph 25 of the suggestions would serve that purpose. The question was at what stage they

should take place. At present, States parties were asked to respond within a year, and were then sent a letter of reminder. In general, the Committee had tended not to push States parties to speed up the process, but it was apparent from the current discussion that the consultations should start sooner rather than later.

74. Perhaps he could be given some flexibility to discuss the administrative arrangements with the secretariat. For example, a follow-up letter could be sent to remind a State party that its response was due in a given number of months, and then consultations would be sought after a certain time had elapsed. If a response was received without consultations being sought, they could be held if necessary, depending on the response received. He had previously suggested that the Committee should wait for two sessions before seeking consultations with a State party, but his current preference would be to seek consultations if the State party had not responded after one session.

75. **The Chairperson** said he took it that the Committee agreed with the proposal to include the amended suggestions in the annual report and to distribute CCPR/C/95/5 as a public document.

76. *It was so agreed.*

77. **The Chairperson** said that he had decided not to provide a Chairperson's summary following the examination of a State party's periodic report because some States parties had been under the mistaken impression that it constituted a summary of the concluding observations to be produced subsequently.

78. At the current session, the Swedish delegation had not made an oral summary of its responses, but had submitted written replies well in advance and the document had been available in translation. That practice saved time, but he was aware that not all members of the Committee agreed with it.

79. **Mr. Thelin** said that he supported the Chairperson's position. It would be a waste of the Committee's time for a delegation to repeat what was already available in written form.

80. **Ms. Wedgwood** said that, while delegations should not read out the full text of their written answers, a brief oral summary would be very useful, especially if the Committee was successful in making its sessions more accessible to the public. A summary of the main points would set the scene for representatives of NGOs or other interested individuals in the room who had not received the written answers beforehand. Another solution would be to make the written responses available in advance on the Committee's website. In the case of podcasting, however, which would open the meetings to a much broader public, it might still be useful to provide an oral summary. In the case of the Swedish delegation, the long introduction had meant that less time was available for answering questions.

81. **Mr. O'Flaherty** said he agreed that oral responses were unnecessary when written responses had been provided and were available as public documents. The delegation's opening statement still provided the opportunity to cover the key issues. Members of delegations should also be reminded that their responses to questions posed in the room should be precise and concise.

82. Another issue of concern was the balance between the first and second parts of the discussion of the list of issues relating to a State party's report. Although the issues covered in the second part were equally important, there was not always sufficient time to give them the attention they wanted. That issue would have to be addressed in some way, perhaps through the Chairperson's guidance of the dialogue.

83. **Sir Nigel Rodley** said he understood that from one point of view it was better for the State party to make a presentation. However, such a practice could send out the wrong signal, as the whole purpose of providing written responses in time for translation was to shorten the proceedings. It was already difficult to complete the discussion within two meetings. States parties should be encouraged to follow the example of the Swedish delegation, which had made an introductory statement covering the key points.

84. **Ms. Wedgwood**, supported by Mr. O'Flaherty, suggested that the task force group should be allowed to arrange the lists of issues in order of priority.

85. **Mr. Rivas Posada** said that perhaps the Committee needed to reappraise its rules for task forces and for dialogues with delegations. It might be better not to rush into setting rules and regulations for States' participation in a cooperative dialogue with the Committee. Some criteria were needed, but the Committee should not go too far.

86. The State's initial presentation should ideally be a brief introduction rather than a summary of its answers

to questions. The Chairperson would have to make a recommendation to that effect very discreetly in advance. States parties should also be reminded that it was a waste of time to read out the text of written answers that were already available in a document. Of course, there would still be an opportunity for oral presentations to respond to the Committee's concerns.

87. **The Chairperson** said that the Committee would return to the issue at a later stage together with other issues relating to consideration of States parties' reports.

88. **Ms. Majodina** cautioned against rushing to adopt a rule about prioritizing lists of issues, which could give the impression that certain provisions of the Covenant were relegated to the end because they were less important.

89. **Ms. Wedgwood** said that the task forces should be given the prerogative to order the list of issues as they wished, on an ad hoc basis, without making a hard-and-fast rule of any kind.

The public part of the meeting ended at 5.30 p.m.